

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**BLUE SPIKE, LLC,**

*Plaintiff,*

**V.**

**TEXAS INSTRUMENTS, INC.,**

***Defendant.***

**Consolidated Civil Action No. 6:12-  
CV-499-LED**

## JURY TRIAL DEMANDED

**PLAINTIFF’S REPLY IN RESPONSE TO DEFENDANT SMRTV, INC.’S FIRST  
AMENDED COUNTERCLAIMS**

Plaintiff Blue Spike, LLC files this Reply to the First Amended Counterclaims of SMRTV, Inc. (“SMRTV” or “Defendant”) (Dkt. No. 1395) as follows. All allegations not expressly admitted or responded to by Plaintiff are denied.

**FACTUAL BACKGROUND**  
**(Described in Defendant's Eighth Affirmative Defense)**

70. Blue Spike, LLC is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 70 and therefore denies.

71. Blue Spike, LLC denies the allegations of Paragraph 71.

72. Blue Spike, LLC denies the allegations of Paragraph 72.

73. Blue Spike, LLC denies the allegations of Paragraph 73.

74. Blue Spike, LLC is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 74 and therefore denies.

75. Blue Spike, LLC denies the allegations of Paragraph 75.

76. Blue Spike, LLC denies the allegations of Paragraph 76.

77. Blue Spike, LLC denies the allegations of Paragraph 77.

78. Blue Spike, LLC denies the allegations of Paragraph 78.

- 79. Blue Spike, LLC denies the allegations of Paragraph 79.
- 80. Blue Spike, LLC is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 80 and therefore denies.
- 81. Blue Spike, LLC denies the allegations of Paragraph 81.
- 82. Blue Spike, LLC denies the allegations of Paragraph 82.
- 83. Blue Spike, LLC denies the allegations of Paragraph 83.
- 84. Blue Spike, LLC denies the allegations of Paragraph 84.
- 85. Blue Spike, LLC denies the allegations of Paragraph 85.
- 86. Blue Spike, LLC admits the allegations of Paragraph 86.
- 87. Blue Spike, LLC denies the allegations of Paragraph 87.
- 88. Blue Spike, LLC denies the allegations of Paragraph 88.
- 89. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 89 and therefore denies.
- 90. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 90 and therefore denies.
- 91. Blue Spike, LLC is without knowledge sufficient to form a belief as to the truth or the allegations of Paragraph 91 and therefore denies.
- 92. Blue Spike, LLC denies the allegations of Paragraph 92.
- 93. Blue Spike, LLC denies the allegation that SMRTV is not liable for infringement of the patents-in-suit. Blue Spike, LLC also responds that Gracenote has not been accused of patent infringement in this action and therefore cannot be held liable for infringement.

### **COUNTERCLAIMS**

- 123. Paragraph 123 contains no allegations requiring an admission or denial.

124. Paragraph 124 contains no allegations requiring an admission or denial.

125. Blue Spike, LLC admits the allegations of Paragraph 125.

126. Paragraph 126 contains no allegations requiring an admission or denial. To the extent Paragraph 126 is construed as an allegation that SMRTV is entitled to declaratory judgment Blue Spike, LLC denies the same.

127. Blue Spike, LLC admits the allegations of Paragraph 127.

128. Blue Spike, LLC admits the allegations of Paragraph 128.

129. Blue Spike, LLC admits that an actual controversy exists between Blue Spike LLC and SMRTV by virtue of the allegations of Blue Spike's Complaint and SMRTV's Answer and Counterclaims.

**FIRST COUNTERCLAIM**  
**(Declaratory Judgment of Non-Infringement of the '175 Patent)**

130. Blue Spike, LLC repeats and incorporates by reference its responses to the allegations contained in Paragraphs 74-80.

131. Blue Spike, LLC admits the allegations of Paragraph 131.

132. Blue Spike, LLC denies the allegations of Paragraph 132.

133. Blue Spike, LLC denies that SMRTV is entitled to the relief it seeks in Paragraph 133.

**SECOND COUNTERCLAIM**  
**(Declaratory Judgment of Invalidity of the '175 Patent)**

134. Blue Spike, LLC repeats and incorporates by reference its responses to the allegations contained in Paragraphs 74-80.

135. Blue Spike, LLC admits the allegations of Paragraph 135.

136. Blue Spike, LLC denies the allegations of Paragraph 136.

137. Blue Spike, LLC denies that SMRTV is entitled to the relief it seeks in Paragraph 137.

**THIRD COUNTERCLAIM**  
**(Declaratory Judgment of Non-Infringement of the '494 Patent)**

138. Blue Spike, LLC repeats and incorporates by reference its responses to the allegations contained in Paragraphs 74-80.

139. Blue Spike, LLC admits the allegations of Paragraph 139.

140. Blue Spike, LLC denies the allegations of Paragraph 140.

141. Blue Spike, LLC denies that SMRTV is entitled to the relief it seeks in Paragraph 141.

**FOURTH COUNTERCLAIM**  
**(Declaratory Judgment of Invalidity of the '494 Patent)**

142. Blue Spike, LLC repeats and incorporates by reference its responses to the allegations contained in Paragraphs 74-80.

143. Blue Spike, LLC admits the allegations of Paragraph 143.

144. Blue Spike, LLC denies the allegations of paragraph 144.

145. Blue Spike, LLC denies that SMRTV is entitled to the relief it seeks in Paragraph 145.

**FIFTH COUNTERCLAIM**  
**(Declaratory Judgment of Non-Infringement of the '700 Patent)**

146. Blue Spike, LLC repeats and incorporates by reference its responses to the allegations contained in Paragraphs 74-80.

147. Blue Spike, LLC admits the allegations of Paragraph 147.

148. Blue Spike, LLC denies the allegations of paragraph 148.

149. Blue Spike, LLC denies that SMRTV is entitled to the relief it seeks in Paragraph 149.

**SIXTH COUNTERCLAIM**  
**(Declaratory Judgment of Invalidity of the '700 Patent)**

150. Blue Spike, LLC repeats and incorporates by reference its responses to the allegations contained in Paragraphs 74-80.

- 151. Blue Spike, LLC admits the allegations of Paragraph 151.
- 152. Blue Spike, LLC denies the allegations of paragraph 152.
- 153. Blue Spike, LLC denies that SMRTV is entitled to the relief it seeks in Paragraph 153.

**SEVENTH COUNTERCLAIM**  
**(Declaratory Judgment of Non-Infringement of the '472 Patent)**

- 154. Blue Spike, LLC repeats and incorporates by reference its responses to the allegations contained in Paragraphs 74-80.
- 155. Blue Spike, LLC admits the allegations of Paragraph 155.
- 156. Blue Spike, LLC denies the allegations of paragraph 156.
- 157. Blue Spike, LLC denies that SMRTV is entitled to the relief it seeks in Paragraph 157.

**EIGHTH COUNTERCLAIM**  
**(Declaratory Judgment of Invalidity of the '472 Patent)**

- 158. Blue Spike, LLC repeats and incorporates by reference its responses to the allegations contained in Paragraphs 74-80.
- 159. Blue Spike, LLC admits the allegations of Paragraph 159.
- 160. Blue Spike, LLC denies the allegations of Paragraph 160.
- 161. Blue Spike, LLC denies that SMRTV is entitled to the relief it seeks in Paragraph 161.

**NINTH COUNTERCLAIM**  
**(Breach of Contract)**

- 162. Blue Spike, LLC repeats and incorporates by reference its responses to the allegations contained in Paragraphs 70-93.
- 163. Blue Spike, LLC denies the allegations of Paragraph 163.
- 164. Blue Spike, LLC denies the allegations of Paragraph 164.
- 165. Blue Spike, LLC denies the allegations of Paragraph 165.
- 166. Blue Spike, LLC denies the allegations of Paragraph 166.

- 167. Blue Spike, LLC denies the allegations of Paragraph 167.
- 168. Blue Spike, LLC denies the allegations of Paragraph 168.
- 169. Blue Spike, LLC denies the allegations of Paragraph 169.
- 170. Blue Spike, LLC denies the allegations of Paragraph 170.
- 171. Blue Spike, LLC denies the allegations of Paragraph 171.
- 172. Blue Spike, LLC denies the allegations of Paragraph 172.
- 173. Blue Spike, LLC denies the allegations of Paragraph 173.
- 174. Blue Spike, LLC denies the allegations of Paragraph 174.

**PRAYER FOR RELIEF**

Blue Spike, LLC denies that Defendant is entitled to any of the relief it requests.

**REQUEST FOR RELIEF  
PLAINTIFF'S PRAYER FOR RELIEF**

In addition to the relief requested in Plaintiff's Amended Complaint, Blue Spike, LLC respectfully requests a judgment against Defendant as follows:

- (a) That Defendant take nothing by its Counterclaims;
- (b) That the Court award Blue Spike, LLC its costs and attorneys' fees incurred in defending against these Counterclaims; and
- (c) Any and all further relief for the Blue Spike, LLC as the Court may deem just and proper.

Respectfully Submitted,

/s/ Randall T. Garteiser  
Randall T. Garteiser  
Texas Bar No. 24038912  
rgarteiser@ghiplaw.com

Christopher A. Honea  
Texas Bar No. 24059967  
chonea@ghiplaw.com  
Christopher S. Johns  
Texas Bar No. 24044849  
cjohns@ghiplaw.com  
Kirk J. Anderson  
California Bar No. 289043  
Peter S. Brasher  
California Bar No. 283992  
**GARTEISER HONEA, P.C.**  
218 N. College Ave.  
Tyler, Texas 75702  
Telephone: (903) 705-7420  
Facsimile: (888) 908-4400

***Counsel for Blue Spike LLC***

**CERTIFICATE OF SERVICE**

I, Randall T. Garteiser, am the ECF User whose ID and password are being used to file this document. I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this day. Pursuant to Federal Rule of Civil Procedure 5, this document was served via U.S. Mail and electronic means to counsel for Defendant that are not receiving this document via CM/ECF.

/s/ Randall T. Garteiser  
Randall T. Garteiser